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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,865	08/27/2001	Reuben Hertz		3746

31877 7590 07/21/2005

ALLEN D. HERTZ
12784 TULIPWOOD CIRCLE
BOCA RATON, FL 33428

EXAMINER

ROSE, ROBERT A

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/939,865	Applicant(s) HERTZ, REUBEN	
	Examiner Robert Rose	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-12,14-20,25,27-31,33-38,43,47 and 48 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 20,25,27,28,43,47 and 48 is/are allowed.
 6) ☒ Claim(s) 1,2,4-12,14-19,29-31 and 33-38 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of newly found art applied against at least some of the pending claims, prosecution has been reopened in this application.
2. The amendment filed July 7, 2005 has been entered.
3. Claims 3, 13, 21-24, 26, 32, 39-42, and 44-46 have been canceled.
4. Claims 47-48 have been added.
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 4-5, 9-12, 14-15, 19, 29-31, 33-34, and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. Herold et al disclose an apparatus for propelling a stream of particulate matter comprising all of the subject matter set forth in the claims above. A compressed gas source is delivered to a mixing chamber through a gas receiving port, and mixes with abrasive within the chamber, followed by discharge through a discharge conduit to strike a target material. The limitation of the particle-directing tube being "bendable" is a functional limitation which is deemed sufficiently broad to read on the discharge tube of Herold et al. While already shown as having a bend, the material in Herold et al is certainly capable of being bent. The device of Herold et al is intended for hand-held use for abrading the surfaces of a tooth located in a patients mouth, and contains a pre-charged amount of particulate

matter. No additional particulate matter is introduced by the gas delivery conduit, thus providing a disposable apparatus upon exhaustion of the particulate matter disposed within the mixing chamber, if so desired.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6-8, 16-18, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold et al in view of Dougherty. Dougherty discloses the known use of color coding of containers to identify the contents therein, and further disclose the known use of an end cap(70) for sealing the discharge end of a chamber to prevent the contents from being discharged. The use of color coding to help identify the contents of the chamber would have been obvious in view of Dougherty. Such color coding is used throughout industry for discriminating between similar looking containers, and for identifying their contents. To further provide an end cap at the distal end of the discharge conduit to prevent inadvertent discharge of the media from the chamber when not in use, would have been obvious in view of Dougherty.

9. Claims 20, 25, 27-28, 43, and 47-48 are allowed.

10. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Applicant's new limitation wherein "the mixing

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chamber is pre-charged with a particulate matter...and the gas delivery conduit is not conducive for replacing particulate matter" is deemed to be readable on Herold et al.

Note that in Herold et al the mixing chamber holds a predetermined quantity of particulate matter, and is considered pre-charged. No additional particulate matter is supplied by the gas delivery conduit.

11. In view of the new grounds of rejection set forth in this Office action, this action is not being made final.

12. Any inquiry concerning this communication should be directed to Robert Rose at telephone number (571) 272-4494.

rr

July 19, 2005.



ROBERT A. ROSE
PRIMARY EXAMINER
ART UNIT 323